Supreme Court, U.S.
FILED
JUL 14 1997
CLERK

NO. 96-1978

IN THE SUPREME COURT OF THE UNITED STATES
October Term, 1997

CHARLENE RAMOS,
Petitioner

v.

WILLIAM NEMETZ, et al.,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

RESPONDENT WILLIAM NEMETZ' BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

D. MICHAEL FISHER
Attorney General

** CALVIN R. KOONS
Senior Deputy Attorney General

DENISE A. KUHN
Senior Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15th Floor, Strawberry Square
Harrisburg, PA 17120
Telephone: (717) 783-1471

**Counsel of Record

QUESTION PRESENTED

Whether the Court's decision in Illinois v. Gates, 462 U.S. 213 (1982), should be revisited?

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF CITATIONS	iii
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	3
THIS CASE DOES NOT MERIT REVIEW BY THE COURT	
CONCLUSION	5

STATEMENT OF THE CASE

Petitioner, Charlene C. Ramos, has petitioned the Court to grant certiorari to reverse a judgment of the United States Court of Appeals for the Third Circuit. That judgment affirmed the entry of a directed verdict against Petitioner in a civil rights action she brought against the respondents, two law enforcement officers, who arrested her for possession of illegal drugs. The respondents, William J. Nemetz, a Pennsylvania Office of Attorney General Narcotics Agent, and Todd Frey, a City of Allentown Police Officer, arrested Petitioner on August 14, 1994.[1]

1. On that date, the respondents learned from a reliable, confidential informant that he could purchase one-pound quantities of marijuana from a supplier nicknamed "One-Eyed Louie." App. 2A, 17A, 25A. A "buy bust" was arranged for later that day, when the confidential informant would purchase one pound of marijuana from One-Eyed Louie and the respondents would arrest him. App. 3A-4A, 17A-18A, 26A. The confidential informant did not know One-Eyed Louie's real name but described him as an Hispanic male. App. 2A, 4A, 17A, 25A. One-Eyed Louie agreed to meet the informant in Bucky Boyle Park at 2:30 p.m. App. 4A, 18A, 26A. The informant advised the respondents for whom he was working that One-Eyed Louie would be driving a gray Ford automobile. *Id.*

As predicted, at about 2:30 p.m., the confidential informant saw One-Eyed Louie driving a gray Ford near Bucky Boyle Park. App. 5A, 18A, 26A. The informant told respondents and they stopped the gray Ford. *Id.* In the car were Luis Ramos, his wife Charlene (the petitioner), and their five-year old son. *Id.* Luis Ramos fit the description of One-Eyed Louie. App. 5A-6A. Respondents asked the Ramoses to step out of the car. App. 19A. Agent Nemetz searched the car and found one pound of marijuana under the driver's seat. App. 5A, 19A.

---

[1] All citations herein are to the Appendix attached to the petition for writ of certiorari.

The petitioner owned the gray Ford that Luis Ramos was driving. When the car was stopped, she was seated in the front, passenger seat, App. 26A, the marijuana within reach. App. 26A. Petitioner and her husband were arrested. The charges against petitioner were later dropped when Luis Ramos agreed to plead guilty to charges of possession of a controlled substance and possession of a controlled substance with intent to deliver. App. 6A, 20A.

2. Petitioner then brought a civil rights action against the respondents alleging, among other things, that they had violated her Fourth and Fourteenth Amendment rights by arresting her without probable cause. The case proceeded to a non-jury trial, and the district court, in a bench opinion, concluded that Agent Nemetz had probable cause to stop the vehicle, make the search and arrest the petitioner under the theory of constructive possession. App. 14A. Petitioner appealed.

3. The Court of Appeals affirmed. Citing *Illinois v. Gates*, 462 U.S. 213 (1983), the court explained that "probable cause exists where, under all the circumstances, and given the informant's information and other facts known to the police, there is a fair probability that contraband or evidence of a crime will be found in a particular place." App. 25A. After reciting the circumstances leading to the search, the court concluded that it was lawful. App. 26A. The court also concluded that there was probable cause for petitioner's arrest: "Once the police discovered the marijuana, they were justified in arresting Charlene Ramos. The marijuana was discovered under the front seat, where Charlene Ramos had been sitting, and was within her reach. Under Pennsylvania law, a person may be charged with a narcotics offense if he or she is in constructive possession of contraband." App. 26A-27A.

Petitioner now asks the Court to issue a writ of certiorari.

REASONS FOR DENYING THE WRIT

THIS CASE DOES NOT MERIT REVIEW BY THE COURT

1. This case does not present any significant or important issue to justify review by the Court. Petitioner attempts to present the case as one involving an important question of law, *i.e.*, the need to refine the "totality of the circumstances" test for determining the reliability of a confidential informant as announced in *Illinois v. Gates*, 462 U.S. 213, 230 (1982). Petitioner, however, mischaracterizes the case. She was arrested, not in improper reliance on the informant's tip, but because, having acted on the tip and searched her car as petitioner concedes they were entitled to do, respondents concluded that she was in constructive possession of narcotics they found there.

As petitioner admits (Petition, pp. 3-4), there was probable cause here, based on the substantial corroboration of the confidential informant's tip, *see Illinois v. Gates*, for the respondent law enforcement officers to believe that Luis Ramos was engaged in illegal activity, justifying the officers' warrantless stop and search of the vehicle. Thereafter, petitioner was not just "anyone in the vicinity" (Petition, pp. 9, 11) nor was she "automatically arrested." (Petition, p. 13.) Rather, once Agent Nemetz found the pound of marijuana in the car under the driver's seat, the facts and circumstances within his knowledge, *i.e.*, Ms. Ramos' presence in the car, her ownership of the car, her relationship to the driver and her proximity to the drugs just in advance of the prearranged drug sale, App 26A-27A, were such that he had probable cause, independent of the informant's tip, to believe that petitioner was in possession, or at least constructive possession, of a controlled substance.

2. There is no warrant for the Court to revisit *Illinois v. Gates* and modify it, as petitioner suggests, to eviscerate the law of constructive possession. Petitioner has pointed to no conflicts among the circuits concerning the "totality of circumstances" test announced in that case, and she has not pointed to cases that suggest that, since the decision was handed down in 1983, lower courts have had difficulty in applying its holding, or that the test

has proved unworkable. Rather, this is simply a case in which the petitioner asks the Court to rewrite settled law so as to benefit her in her civil action. The Court should deny the petition.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

D. MICHAEL FISHER
Attorney General

BY: CALVIN R. KOONS
Senior Deputy Attorney General

DENISE A. KUHN
Senior Deputy Attorney General

JOHN G. KNORR, III
Chief Deputy Attorney General
Chief, Litigation Section

OFFICE OF ATTORNEY GENERAL
15TH Floor Strawberry Square
Harrisburg, PA 17120
(717) 783-1471

DATED: July 14, 1997